

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

V.

CAPISTRANO UNIFIED SCHOOL DISTRICT.

CASE NO. 2025010272

DECISION

July 31, 2025

On January 10, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Capistrano Unified School District, called Capistrano, as respondent. OAH granted Student's motions to amend on February 13, 2025, and March 21, 2025. On March 28, 2025, OAH granted a due process hearing continuance. Administrative Law Judge Claire Yazigi, called an ALJ, heard this matter virtually on May 20, 21, 22, 23, 27, and 29, 2025.

Attorneys Tim Adams and Madeline Knutson represented Student. Parents attended all hearing days on Student's behalf. Attorney Tracy Petznick Johnson represented Capistrano. Dr. Kathleen Purcell and Deborah Aufill attended hearing on Capistrano's behalf.

The matter was continued to June 23, 2025, for written closing briefs. The record was closed, and the matter was submitted on June 23, 2025.

ISSUES

On the first hearing day, the ALJ granted Student's motion to correct an error in the wording of the Order Following Prehearing Conference by replacing the word "writing" in Issue 2.b. with "reading comprehension." Student also withdrew Issue 3 as set forth in the Order Following Prehearing Conference. These changes are reflected in the issue statement below. A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

1. Did Capistrano deny Student a FAPE in the IEPs developed on January 10, 2023, February 7, 2023, May 25, 2023, August 29, 2023, and September 19, 2023, by failing to:
 - a. Offer goals in sensory processing, auditory processing, anxiety, executive function, and organization;
 - b. Offer appropriate goals in the areas of written expression, reading, and reading comprehension;
 - c. Offer services in the areas of counseling and extended school year;
 - d. Offer appropriate services in the areas of occupational therapy, audiology, and intensive reading and writing interventions;

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- e. Offer an appropriate placement, and;
 - f. Have a school psychologist, occupational therapist, and speech and language pathologist attend the September 19, 2023 IEP team meeting?
- 2. Did Capistrano deny Student a FAPE in the IEP developed on October 10, 2023, October 26, 2023, and January 22, 2024, by failing to:
 - a. Offer goals in reading, sensory processing, auditory processing, and organization;
 - b. Offer appropriate goals in the areas of reading comprehension, written expression, executive function, and anxiety;
 - c. Offer services in the areas of audiology and extended school year;
 - d. Offer appropriate services in the areas of occupational therapy, counseling, and intensive reading and writing interventions; and
 - e. Offer an appropriate placement?
- 3. Did Capistrano deny Student a FAPE by failing to provide Parents prior written notice regarding Parents' February 12, 2024 request for reimbursement for private placement and request for convening Student's annual IEP team meeting?

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4. Did Capistrano deny Student a FAPE by failing to ensure that Parents' selected independent educational evaluator, Dr. Grajewski, received sufficient opportunity to observe Student's educational placement in spring 2024?
5. Did Capistrano deny Student a FAPE by failing to convene an annual IEP team meeting by the October 9, 2024 due date?
6. Did Capistrano deny Student a FAPE in the IEP developed on November 18, 2024, by failing to:
 - a. Offer goals in sensory processing, auditory processing, executive function, and organization;
 - b. Offer appropriate goals in the areas of anxiety, written expression, reading, and reading comprehension;
 - c. Offer services in the areas of audiology and extended school year;
 - d. Offer appropriate services in the areas of occupational therapy, counseling, and intensive reading and writing interventions; and
 - e. Offer an appropriate placement?
7. Did Capistrano deny Student a FAPE by failing to ensure meaningful parental participation in the IEP process by failing to provide Student's educational records within five days of Parents' October 22, 2024 written request?

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JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511 (2006); Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and

see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student filed this matter and bore the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 13 years old and in seventh grade at the time of hearing. Student resided within Capistrano's geographic boundaries at all relevant times. Student is eligible for special education under the primary category of Specific Learning Disability and the secondary category of Speech or Language Impairment.

ISSUE 1.a.: DID CAPISTRANO DENY STUDENT A FAPE FROM JANUARY 10, 2023, THROUGH THE REMAINDER OF STUDENT'S 2023-2024 FIFTH-GRADE SCHOOL YEAR BY FAILING TO OFFER GOALS IN ANXIETY, EXECUTIVE FUNCTION, ORGANIZATION, SENSORY PROCESSING, AND AUDITORY PROCESSING?

Student became eligible for special education in 2016, when he was in preschool. During the 2022-2023 school year, Student's fifth grade, Capistrano conducted a triennial assessment of Student and reviewed the assessment results at an IEP team meeting on October 12, 2022. Capistrano developed Student's IEP offer over a series of meetings that took place on October 12, 2022, October 24, 2022, and November 7, 2022.

The parties do not dispute that the statutory period in this matter began a couple months later, on January 10, 2023. While Capistrano had already made an annual IEP offer, Student's IEP team met on January 10, 2023, the first day of the present statutory

period, to review the results of an audiology assessment. The IEP team met at least two more times between the beginning of the statutory period and the end of the 2022-2023 school year.

Student asserts that at all times during the statutory period, Capistrano failed to adequately address Student's academic deficits which resulted in school refusal and social-emotional deficits. Student contends that, as a result, Student required placement at The Prentice School, called Prentice, a school that exclusively served students with language-based learning disabilities. Student argues that, although Capistrano had already made an annual IEP offer before the beginning of the statutory period to be litigated, Capistrano continued to have an obligation to revisit its offer at every IEP team meeting during the statutory period to address any FAPE failure, and failed to do so.

Capistrano argues that to construe its obligation this way would circumvent the statute of limitations, and that Student should only be allowed to litigate the decisions made by the IEP team during the statutory period. The IEP team met on January 10, 2023, to review an audiology report and discussed any necessary resulting goals, services, accommodations, and supports. The IEP team met on February 7, 2023, to address the audiologist's clarification of what services were necessary to address Student's audiology need. As such, Capistrano argues that Student should only be permitted to litigate the issue of an auditory processing goal, and that Student is precluded from litigating the remainder of the goals listed in Issue 1.

Capistrano bases its assertion on *E.F. v. Newport Mesa Unified Sch. Dist.*, 726 F. App'x 535 (9th Cir.2018) and its underlying administrative case, *Student v. Newport-Mesa Unified Sch. Dist.*, OAH Case No. 2012050785 (*Newport Mesa*). The facts of the

underlying case are distinguishable from this case. In *Newport Mesa*, the student sought to litigate an IEP addendum that occurred before the beginning of the statutory period. Capistrano points out that the IDEA does not recognize a continuing violation exception to the statute of limitations. This is not what Student seeks to do here.

The “continuing violation” exception to the statute of limitations is a doctrine of common law. In most federal causes of action, when a defendant's conduct is part of a continuing practice, an action is timely so long as the last act evidencing the continuing practice falls within the limitations period; in such an instance, the court will grant relief for the earlier related acts that would otherwise be time barred. (*Brenner v. Local 514, United Broth. of Carpenters and Joiners of America* (3d Cir. 1991) 927 F.2d 1283, 1295 citing *Keystone Ins. Co. v. Houghton*, 863 F.2d 1125, 1129 (3d Cir.1988).)

Here, Student makes no attempt to extend back the statutory period to litigate the earlier-related acts of the fall 2022 IEP offer. For example, Student makes no procedural challenge that would be tied to the date of the earlier-occurring IEP team meeting, like a failure to include required meeting participants that day. Student also does not seek to litigate any FAPE denials spanning from the fall 2022 IEP to the beginning of the statutory period.

Rather, Student only seeks to litigate substantive omissions or errors occurring in the statutory period beginning on January 10, 2023, onward. Student's theory is that a special education student is substantively entitled to an appropriate program, or FAPE, every day in the statutory period, here beginning January 10, 2023, and that Capistrano failed to make one available to Student.

Taking Capistrano's argument to its logical conclusion would impermissibly shorten the statute of limitations to less than two years, thus tying the statute of limitations to an IEP date rather than analyzing the appropriateness of the program for the entire two-year statutory period. The discrepancy becomes apparent when considering the example of two hypothetical pupils that file their due process complaints on the same day. In the two years before filing, Student A's IEPs could have been offered 24 and 12 months before filing. Student B's IEPs could have been offered 13 and one month before filing. Under Capistrano's theory, Student A could challenge the substantive appropriateness of the offered programs for two years, but Student B would be confined to challenging only the last 13 months of the two-year statutory period. Essentially, the statute of limitations would be tied to IEP dates and would be different for each child. Such a narrow view overlooks the dynamic nature of children's needs and the fact that, while a program may initially appear appropriate, substantive deficiencies may not become apparent for months.

Limiting the statute of limitations not to two years, but to the IEPs developed within two years of filing is also contrary to public policy. It would incentivize parents to immediately file for due process rather than allow an IEP sufficient implementation time to judge its efficacy. School districts cannot evade responsibility for a substantively defective IEP simply because the IEP in question was developed before the two-year window, if it is Student's educational program during the statutory period. Any contrary determination would undermine a pupil's rights guaranteed under the IDEA.

Regardless, Student failed to meet his burden of proof on any allegation alleged in Issue 1, as discussed below.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (2006).) Parents and school personnel develop an individualized education program, referred to as an IEP, for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320 (2007), 300.321 (2006), and 300.501 (2006).)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 (*Rowley*); *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000].)

An annual IEP must contain a statement of measurable annual goals designed both to meet the student's disability-related needs to enable the pupil to be involved in and make progress in the general curriculum; and meet each of the pupil's other educational needs that result from disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(b) (2007); Ed. Code, § 56345, subd. (a)(2).) In addition, the IEP must include a description of how the child's progress toward meeting the annual goals will be measured, and when periodic reports on progress will be provided. (20 U.S.C. § 1414(d)(1)(A)(III); 34 C.F.R. § 300.320(b)(4) (2007); Ed. Code, § 56345, subd. (a)(3).) To provide a FAPE, annual goals must be appropriately ambitious in light of the student's circumstances. (*Endrew F., supra*, 580 U.S. 386, 402.) The purpose of annual goals is to permit the IEP team to determine whether the student is making progress in

an area of need. (Ed. Code, § 56345, subd. (a).) To be legally compliant, a goal must be measurable and designed to meet Student's disability-related needs to enable Student to be involved in and make progress in the general curriculum.

ANXIETY GOAL

Student asserts that Capistrano should have offered Student an anxiety goal when it convened IEP team meetings on January 10, 2023, February 7, 2023, and May 25, 2023. Capistrano disagrees, generally contending that it offered a FAPE to Student at all times during the statutory period. It further contends that an allegation of a failure to offer a goal is necessarily tied to the fall 2022 IEP and is time-barred. This latter assertion is rejected as determined above and will not be addressed again in subsequent sections.

Capistrano tested Student's anxiety as part of its triennial assessment. While the triennial assessment occurred before the statutory period, it provides insight into Student's social-emotional and behavior needs during the fifth grade.

Capistrano School Psychologist Ameila Koskella performed part of Student's triennial assessment on October 12, 2022. At the time of hearing, Koskella worked for 16 years as a Capistrano school psychologist. Koskella used the Behavior Assessment System for Children, Third Edition, as one instrument to test Student's behavior and mental health. On this rating scale, Student's fifth-grade general education teacher, Robyn Justl, rated Student's anxiety at "low."

Conversely, Mother, rated Student in the "at-risk" range for anxiety. At hearing, Mother testified that during Student's fifth-grade year, the topic of school had already become a battle at home, with Student resisting going to school in the morning and doing homework at night. Despite this, Mother testified that Parents did not have any

social or emotional concerns about Student at the time of the fall 2022 IEP. Koskella testified that such discrepancy between parent and teacher rating scales was not unusual, and that Koskella believed Justl's reporting of Student's low anxiety was accurate for the school setting. Justl described Student as emotionally strong and did not report any social emotional or behavior concerns. As part of the occupational therapy assessment, Student himself reported that he enjoyed school and had friends at school. Koskella's testimony was based on years of expertise in the field and assessing students, and corroborated by other witness testimony and documentary evidence. Koskella's opinion was more persuasive and credible, and given great weight on this issue.

At the time the fall 2022 IEP was drafted, Student would accept schoolwork help from Justl, but would not independently ask for help when needed. To address this, the IEP offered a self-advocacy goal to assist Student to independently ask his teacher or support staff for help or clarification when he did not understand a direction or assignment. While Student was not presenting with anxiety at school during this time, the offer of the self-advocacy goal evidenced Capistrano's proactive approach to Student's educationally-related social-emotional needs.

Student did not introduce any evidence demonstrating that Student's social emotional needs increased or materially changed from January 10, 2023, through the remainder of the 2022-2023 school year, or that Student exhibited increased anxiety in the school setting during this time. Student did not meet his burden of proof by a preponderance of the evidence establishing that Capistrano denied him a FAPE from January 10, 2023, through the remainder of the 2022-2023 school year by failing to offer an anxiety goal.

ANXIETY GOAL, AUGUST 29, 2023 AND SEPTEMBER 19, 2023 IEP MEETINGS

Student asserts that he demonstrated increased anxiety during the fall of 2023, and Capistrano should have offered an anxiety goal the times that it met prior to Student's annual IEP team meeting, specifically, on August 29, 2023, and September 19, 2023. Capistrano disagrees, generally contending that it offered a FAPE to Student at all times during the statutory period.

Student began the sixth grade, the 2023-2024 school year, on August 15, 2023, in the middle school division of Arroyo Vista, and was almost immediately overwhelmed by school and homework, especially in English class. The IEP team met 10 school days later, on August 29, 2023, to address this, and ultimately changed Student's class schedule from collaborative English to direct, or exclusively special education, English.

Since Student's middle school only had one other student in need of a direct English class, the IEP team suggested that the two direct English students be taught by an education specialist with modified work expectations and access to a separate learning setting as needed, but that the two students would also attend the collaborative English class for discussion and group learning opportunities. This arrangement allowed Student more individualized support and assignments but still exposed him to collaborative learning with general education peers.

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The IEP team met a second time that school year on September 19, 2023, and before Student's October annual IEP team meeting, so that it could immediately address Student's school-related anxiety. Student alleges that each of those meetings was an opportunity for Capistrano to offer Student a goal to address anxiety, yet Capistrano did not.

While Student exhibited school-related challenges from the beginning of the school year, prompting the change in English class on August 29, 2023, Student's significant academic and mental health challenges unfolded over time. By mid-September, Student was still overwhelmed by homework. Aside from English, Student also struggled in science and social science, otherwise known as social studies, as those classes also required a significant amount of reading and writing. Student felt that he could not comprehend material and was falling behind academically.

At the same time, Parent became aware of incidents where peers bullied and excluded Student at school. Student's school refusal intensified, characterized by crying before and after school, and refusing to get out of the car once there. The school counselor and other personnel coaxed Student out of the car in the morning, usually spending about an hour each incident. Around the same time, Student's school refusal also resulted in missing school an average of two to three times a week. Student's anxiety also manifested in severe skin picking, which resulted in bleeding sores.

At the September 19, 2023 IEP team meeting, Parents, through their advocate, requested that the team pause Student's homework in social studies and science. Student's case carrier agreed to communicate that request to Student's teachers. During this time, Student was undergoing an independent evaluation by psychologist Dr. Lisa Grajewski, which had not yet concluded.

The first weeks of the sixth grade were characterized by several layers of stressors and variables: in addition to a learning disability, Student was in the new environment of middle school and entering his preteen, adolescent years. The IEP team was prompt and responsive in scheduling the interim meetings in the fall of 2023. Capistrano was not unreasonable in taking the measures that it did during the first few weeks of school to see what might address Student's needs.

Student failed to meet his burden of persuasion that Capistrano denied him a APE when it failed to offer an anxiety goal at Student's August 29, 2023, and September 19, 2023 IEP team meetings.

EXECUTIVE FUNCTION AND ORGANIZATION GOALS

Student asserts that Capistrano should have offered Student executive function and organization goals when it convened IEP team meetings on January 10, 2023, February 7, 2023, May 25, 2023, August 29, 2023, and September 19, 2023. Capistrano disagrees, generally contending that it offered a FAPE to Student at all times during the statutory period.

Koskella's report defined executive functions as self-management functions that supported attention in multiple tasks of daily life. As part of the fall 2022 triennial assessment, Koskella also administered the Brown Executive Functioning/Attention Scales which are standardized rating scales meant to evaluate Student's executive functioning related to attention-deficit/hyperactivity disorder, called ADHD. The scales focused on an individual's ability to:

- organize, prioritize, and activate to work;
- focus, sustain, and shift attention to tasks;

- regulate alertness, sustain effort, and adjust processing speed;
- manage frustration and modulate emotions;
- utilize working memory and access recall; and
- monitor and self-regulate action.

In almost all of above categories, Mother rated Student as “markedly atypical,” or having a “very significant problem” at home. In regard to monitoring and self-regulating action, Mother rated Student as “moderately atypical,” or having a “significant problem.” Conversely, Justl rated Student as “typical” in each of the same categories at school.

Justl’s rating was consistent with Koskella’s observation of Student in the classroom setting. Koskella observed Student to have the correct materials on his desk for a classroom activity, to follow directions appropriately, to raise his hand and provide a correct response to a question, and to remain engaged throughout the activity. Koskella also observed Student during unstructured time at recess. Student played soccer for the entire duration of recess and appeared to understand the rules of the game. During in-office testing, Student put forth good effort on both preferred and unpreferred tasks and generally persisted as testing became more difficult. Koskella observed Student’s behavior to be appropriate at all times and across all settings.

Jill Edwards, Capistrano speech language pathologist, also conducted observations of Student as part of the 2022 triennial assessment. Edwards observed Student to transition independently to speech sessions, and to often offer assistance to others. Michael Hammond, Capistrano education specialist, conducted academic testing of Student over four days as part of the 2022 triennial assessment. Hammond observed Student to give typical attention to tasks and to persist when presented with difficult tasks.

Neither Justl, Koskella, Edwards, or Hammond observed any executive or organization deficits in the school setting. The weight of the evidence established that Student's behavior in the school environment did not demonstrate an executive function or organization need.

Student did not introduce any evidence showing that these circumstances had materially changed between the January 10, 2023 and September 19, 2023 IEPs, or that Student exhibited increased executive function or organization needs in the school setting during this time.

Student failed to meet his burden of proof by a preponderance of the evidence. Student did not establish that an executive function or organization goal was necessary for FAPE from January 10, 2023, through September 19, 2023.

SENSORY PROCESSING

Student contends that Capistrano should have offered Student sensory goals to address the sensory deficits identified in the fall 2022 assessment. Capistrano disagrees, generally contending that it offered a FAPE to Student at all times during the statutory period by addressing Student's sensory needs through accommodations and supports.

Capistrano Occupational Therapist Gina Sunico conducted an occupational therapy assessment of Student in April 2022. At the time of hearing, Sunico had spent 34 years as a licensed occupational therapist and almost 19 years as a licensed occupational therapist in the public school setting. Sunico found that Student had sensory processing deficits in

- registration,
- visual processing,

- behavior,
- tolerance in the learning environment, and
- availability for learning.

Capistrano addressed this need by offering supports, modifications, and accommodations in the fall 2022 IEP. Supports and modifications included increased movement breaks and access to headphones and adaptive seating options like a dynamic seat cushion and chair band. Accommodations included seating away from auditory distractions and monitoring Student for auditory fatigue.

Student argues that because Student demonstrated sensory processing deficits, Capistrano should have offered a goal in that area. At hearing, Sunico explained that the IEP team did not offer a sensory processing goal because Student's sensory processing needs did not lend themselves to a goal of their own; instead, sensory accommodations, supports and modifications supported Student's progression on his other goals. Goals are appropriate in areas where a student may be supported in making progress; modifications and supports to help a student attain such goals. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. §300.320(a)(4)(i), (ii) & (b) (2007); Ed. Code, § 56345, subd. (a).) However, the IDEA does not require that each identifiable need, deficit, or area of struggle or challenge be addressed in a separate goal as long as the IEP, overall, offers a FAPE. In *Coleman v. Pottstown Sch. Dist.* (E.D.Pa. 2013) 983 F.Supp.2d 543, the District Court found:

Plaintiffs interpret [§ 1414(d)(1)(A)(i)(II)] as requiring a school district to create measurable goals for every recognized educational and functional need of a student with disabilities. ...[I]t would ... be inconsistent with the

longstanding interpretation of the IDEA to find that providing a FAPE requires designing specific monitoring goals for every single recognized need of a disabled student.

(*Id.* at pp. 572-573.) The Court of Appeal affirmed that part of the District Court's decision. (*Coleman v. Pottstown Sch. Dist.* (3d Cir. 2014) 581 Fed.Appx. 141, 147-148; see also *N.M. v. The Sch. Dist. of Philadelphia* (3d Cir. 2010) 394 Fed.Appx. 920, 923 [nonpub. opn.]; *L.M. v. Downingtown Area Sch. Dist.* (E.D. Pa., April 15, 2015, No. 12-CV-5547) 2015 WL 1725091, p. 16; *Benjamin A. v. Unionville-Chadds Ford Sch. Dist.* (E.D. Pa., Aug. 14, 2017, Civ. No. 16-2545) 2017 WL 3482089, pp. 12-13.)

Measured against Student's legally unsound assertion that Capistrano should have offered a goal for each deficiency, Sunico's more detailed testimony carries greater weight, establishing that Student's sensory processing needs were addressed with accommodations, supports, and modification, and a goal in this area was unneeded to provide FAPE. Student did not overcome his burden in demonstrating that a sensory processing goal was necessary under these facts.

Student introduced no evidence establishing that these circumstances had materially changed during January 10, 2023 and September 19, 2023 IEPs, or that Student exhibited increased executive sensory processing needs in the school setting during this time. Student did not meet his burden of proof by a preponderance of the evidence in establishing that a sensory processing goal was necessary for FAPE from January 10, 2023, through September 19, 2023.

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AUDITORY PROCESSING

Student argues that because Student demonstrated auditory processing deficits, Capistrano should have necessarily offered a goal in that area. Capistrano disagrees, generally contending that it offered a FAPE to Student at all times during the statutory period by addressing Student's auditory processing needs through accommodations, supports, and a one-time course in audiological training.

As part of the triennial assessment, Koskella also conducted a test of auditory processing skills. Koskella found Student's overall auditory processing score to be in the low average range, and, as a result, referred Student for an audiological evaluation to gather more information.

Dr. Pamela Best conducted the audiological evaluation in November of 2022 and diagnosed Student with amblyaudia, an integration deficit where Student's right ear was stronger than his left. Best found that Student's deficits were likely to affect him within the educational environment. The evidence established that Student had reduced listening comprehension when in a noisy or competing sound setting, an inability to filter out ambient noise, and an inability to synthesize and attach meaning quickly to incoming verbal information.

Best made several recommendations for Student in the educational setting. At the January 10, 2023 IEP team meeting, the IEP team incorporated these recommendations into Student's IEP. One of the recommendations was Auditory Rehabilitation for Interaural Asymmetry, or ARIA, a therapy to treat the integration deficit caused by

ambylauria, because one of Student's ears was more dominant in auditory processing, and, as a result, caused difficulty hearing in noise. ARIA was a type of dichotic training to train Student's brain to better filter ambient noise.

Another recommendation was an FM system, whereby Student's teacher would wear an around-the-neck lanyard with an FM transmitter on it to amplify the teacher's voice, and Student would wear clear earbud receivers. The IEP team added an additional hour of ARIA training on February 7, 2023. The evidence showed Capistrano met Student's auditory processing needs through these supports.

Student argues that because Student demonstrated auditory processing deficits, Capistrano should have necessarily offered a goal in that area. Student did not establish that, given the nature of auditory processing deficiency, he required a goal. Specifically, Student did not establish that a goal would have been effective in treating the processing disorder. Capistrano addressed the ambylauria through supports, and it formulated goals to address educationally-related needs that resulted from the ambylauria – for example, difficulty with reading, reading comprehension, and written expression. The auditory processing supports assisted Student in attaining these goals. The propriety of these goals is discussed below.

Student introduced no evidence showing that his circumstances had materially changed during January 10, 2023 and September 19, 2023 IEPs, or that Student exhibited increased executive auditory processing needs in the school setting during this time. Student did not prove by the preponderance of the evidence that an auditory processing goal was necessary for FAPE from January 10, 2023, through September 19, 2023.

ISSUE 1.b.: DID CAPISTRANO DENY STUDENT A FAPE FROM JANUARY 10, 2023, THROUGH THE REMAINDER OF STUDENT'S 2023-2024 FIFTH-GRADE SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE GOALS IN WRITTEN EXPRESSION, READING, AND READING COMPREHENSION?

WRITTEN EXPRESSION GOALS

Student contends that Capistrano's written expression goals were inadequate because they did not include a spelling goal. Generally, Capistrano contends that it offered Student a FAPE.

The specific deficiencies cited were known at the time of drafting, in the fall of 2022, and are time-barred. This analysis is distinct from Capistrano's general assertion that any FAPE claims on an IEP that is already operative at the beginning of a statutory period are categorically time-barred.

At the beginning of the statutory period, Student had an informative paragraph goal in place. Student argues that this goal was too vague. Student also had an opinion paragraph goal in place, which Student argues did not provide a measurable baseline.

A goal is vague, clear, or measurable on the day it is drafted and offered. The goals in Issue 1 were drafted and offered during the fall of 2022, before the beginning of the statutory period. Student is not seeking to extend the statute of limitations. Whether Student's goals were vague or measurable falls outside the statutory period. No findings are reached regarding whether the informative paragraph and opinion paragraph goals were vague or measurable as these claims are time barred.

Unlike measurability that can be determined at a fixed point in time, namely, when offered, the substantive appropriateness of the IEP and whether Student has a need requiring a goal falls within the statutory period. The IEP implemented after January 10, 2023, needed to meet Student's needs. For this reason, Student's allegations regarding the need for a spelling goal and keyboarding goal are addressed here.

Student argues that during this time, a spelling goal should have been offered because Student scored in the "low average" range on the spelling subtest on the Woodcock-Johnson Tests of Academic Achievement, Fourth Edition, as part of the fall 2022 triennial multidisciplinary assessment. The purpose of annual goals is to permit the IEP team to determine whether the student is making progress in an area of need. (Ed. Code, § 56345, subd. (a).) Student did not fall below average for this metric. The fact that Student was in the low average range for spelling does not, on its own, establish by a preponderance that spelling was an area of need during this time period or that the IEP team should have offered Student a goal in spelling.

At the beginning of the statutory period, Student also had a goal for increasing his keyboarding efficiency. Student argues that the keyboard efficiency goal only focused on increasing Student's speed and neglected to consider how his low average spelling ability may have impacted his keyboarding efficiency. The keyboard efficiency goal identified an area of need, specifically, Student's low number of typed words per minute, and the goal sought to improve such efficiency within one year. To be legally compliant, a goal must be measurable and include a description of how the child's progress toward meeting the annual goals will be measured, and when periodic reports on progress will be provided. Goals must be designed to meet Student's disability-related needs to enable Student to be involved in and make progress in the

general curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(II) and (III); 34 C.F.R. §300.320(b); Ed. Code, § 56345, subd. (a)(2) and (3).) The IDEA does not require, on the face of a goal, a description of how the desired result will be achieved or the considerations of the individual responsible for implementing it.

The keyboarding efficiency goal in place at the beginning of the statutory period was appropriate.

READING FLUENCY

At the beginning of the statutory period, Student had a reading fluency goal in place. It sought to have Student read a fifth-grade passage with an average of 120 words per minute by year's end. Student contends that this goal was unreasonably ambitious given Student's challenges with reading fluency. Capistrano generally contends that its goals were appropriate at all times during the statutory period.

On the Woodcock-Johnson administered in fall 2022, Student's reading fluency standard score was 80, in the low average range. On the DIBELS standardized literacy test, Student's reading fluency standard score was 79 in the low range and his reading with accuracy score was 95 in the average range. The IEP team identified Student's reading fluency as an area of need, and offered a goal to address it.

At the time the goal was drafted, Student's baseline performance was reading a Wonderworks Reading Intervention passage at the 4-5 level at 90 words per minute, and a Grade 4 Wonders passage at 115 words per minute. The IEP team noted that, while reading the Grade 4 Wonders passages, Student "read with fluency and minimal errors." The IEP team planned for Student to gradually achieve this goal by first reading a fifth-grade passage at 90 words per minute in four out of five consecutive trials,

and then reading a fifth-grade passage at 105 words per minute in four out of five consecutive trials, eventually building up to the annual goal of 120 words per minute in four out of five consecutive trials.

Michael Hammond was the Arroyo Vista Middle School department chair of special education, overseeing caseloads for educational specialists as well as the staff of paraprofessionals for the sixth, seventh, and eighth grades. Hammond held an active multi subject special education credential, and at the time of hearing, had been teaching for 24 years. In addition to being the special education department chair, Hammond also taught direct math for the sixth, seventh, and eighth grades, and taught the reading resource class that supported special education students in all subjects. Hammond conducted the academic testing of Student in the fall of 2022, served on the IEP team and helped author the academic goals. In drafting the goals, Hammond drew not only on his experience as a special education teacher but confirmed their appropriateness by communicating with Student's previous year's teachers.

Student's blanket assertion that the reading fluency goal was overly ambitious was not persuasive enough to establish by a preponderance that Student's reading fluency goal was inappropriate, especially given Hammond's contrary opinion. Hammond's opinion was made more persuasive by his years of experience and expertise in special education and writing special education goals, and that he consulted with Student's prior teachers.

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READING COMPREHENSION

At the beginning of the statutory period, Student also had a reading comprehension goal in place. The goal asked for “when given a fifth-grade level passage, Student will correctly answer “wh” questions with 90% accuracy in three out of three consecutive trials. Student argues that this goal was unreasonably ambitious given Student’s challenges with reading comprehension. Capistrano generally contends that its goals were appropriate at all times during the statutory period.

On the Woodcock-Johnson administered in fall 2022, Student’s reading comprehension standard score was 85, in the low average range. The IEP team identified Student’s reading comprehension as an area of need, and offered a goal to address it.

The IEP team planned for Student to gradually achieve the reading comprehension goal by first answering “wh” questions on a fifth grade passage with 70 percent accuracy in three out of three trials, and then answering “wh” questions on a fifth grade passage with 80 percent accuracy in three out of three trials, eventually building up to the annual goal of answering “wh” questions on a fifth grade passage with 90 percent accuracy in three out of three trials. Hammond also drafted this goal, and testified to its appropriateness. Hammond also confirmed its appropriateness by communicating with Student’s previous year’s teachers. Given that Student was already reading with fourth grade fluency at the time the comprehension goal was drafted, and that Student’s tested comprehension was not below the average range, Student’s

blanket assertion that the reading comprehension goal was overly ambitious was not persuasive to establish by a preponderance that Student's reading comprehension goal was inappropriate.

ISSUE 1.c.: DID CAPISTRANO DENY STUDENT A FAPE FROM JANUARY 10, 2023, THROUGH THE REMAINDER OF STUDENT'S 2023-2024 FIFTH-GRADE SCHOOL YEAR BY FAILING TO OFFER COUNSELING AND EXTENDED SCHOOL YEAR?

COUNSELING

As determined in Issue 1.a., Student did not establish a need for counseling during the spring semester of his fifth grade year. Capistrano did not deny Student a FAPE by not offering counseling from January 10, 2023, through the remainder of Student's fifth-grade year.

EXTENDED SCHOOL YEAR

Student contends Capistrano should have offered extended school year services because of the regression that Student demonstrated between the 2019 and 2022 triennial assessments. Capistrano generally contends that Student did not exhibit regression over breaks and thus did not exhibit a need for extended school year.

Extended school year means special education and related services that are provided to a child with a disability beyond the normal school year of the public agency, in accordance with the child's IEP. (34 C.F.R. § 300.106 (b) (2006).) Extended school year is the time between the close of one academic year and the beginning of

the succeeding academic year. (Cal. Code Regs., tit. 5, § 3043, subd.(c).) Each public agency must ensure that these services are available as necessary to provide FAPE. (Ed. Code, § 56345, subd. (b)(3); 34 C.F.R. § 300.106(a) (2006).) The IEP determines on an individual basis whether extended school year services are necessary for the provision of FAPE. (34 C.F.R. §300.106 (a)(2) (2006).) Extended school year services shall be provided for each individual with exceptional needs who has unique needs and requires special education and related services in excess of the regular academic year. Such individuals shall have handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition. (Cal. Code Regs., tit. 5, § 3043.) An extended year program shall be provided for a minimum of 20 instructional days, including holidays. (Cal. Code Regs., tit.5, § 3043, subd.(d).)

Student's expert, Grajewski, opined that Capistrano should have offered extended school year because of the regression that Student demonstrated between the 2019 and 2022 triennial assessments. This analysis is not persuasive. Student did not establish that any discrepancy, if at all, between triennial assessments, conducted three years apart, was due to breaks in instruction coupled with limited recoupment capacity. Student did not, for example, compare standardized testing data at the end of one school year compared with the same testing data at the beginning of the following

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school year after a summer break. Student did not offer any of his teachers' opinion that he lost academic gains between school years during the summer that were difficult to recoup the following year as compared to general education peers.

Student did not establish a need for extended school year, and failed to prove that Capistrano denied Student a FAPE by not offering it.

ISSUE 1.d.: DID CAPISTRANO DENY STUDENT A FAPE FROM JANUARY 10, 2023, THROUGH THE REMAINDER OF STUDENT'S 2023-2024 FIFTH-GRADE SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE SERVICES IN THE AREAS OF OCCUPATIONAL THERAPY, AUDIOLOGY, AND INTENSIVE READING AND WRITING INTERVENTIONS?

OCCUPATIONAL THERAPY

Student contends that Capistrano's occupational therapy offer was insufficient to address all of Student's occupational needs in sensory processing, keyboarding speed, and writing speed. Capistrano generally contends its occupational therapy assessment was appropriate.

Capistrano conducted occupational therapy assessments of Student in April and September of 2022. Student demonstrated sensory processing deficits and difficulty in keyboarding and writing speed, however, Student was more proficient at writing. The fall 2022 IEP offered a keyboarding efficiency goal since Student was going to need keyboarding skills going into middle school which was more computer based than elementary school.

The occupational therapy service offer in place at the beginning of the statutory period was 30 minutes, two times per month, of group support pushed into general education. Student argues this was insufficient to address all of Student's occupational needs in sensory processing, keyboarding speed, and writing speed. Student had only one occupational therapy goal to work on, meant to address keyboarding efficiency. Writing speed was not an area covered by an occupational therapy goal, and Student has not alleged that it should have been. Further, Student's occupational therapy needs, including sensory processing, were addressed through accommodations and supports, as discussed in Issue 1.a.

Aside from a blanket statement alleging that the occupational services offered were insufficient, Student did not explain, or establish, the insufficiency of the occupational therapy service, and failed to prove that Capistrano's occupational therapy services offer from June 10, 2023, through the remainder of Student's fifth-grade year denied Student a FAPE.

AUDIOLOGY

Student contends that Capistrano should have offered ongoing services to address working memory deficits, but did not. Capistrano generally contends that the IEP offers it made during the statutory period constituted FAPE.

The January 10, 2023 IEP team offered audiology services consistent with the recommendations from Best's audiology assessment report. Specifically, the team offered five 60-minute individual sessions of ARIA program with a licensed audiologist.

The IEP team amended the offer on February 7, 2023, to include an additional hour of audiological services, as Best clarified that a total of six sessions were needed to complete the ARIA training. The IEP team incorporated other recommendations by Best as accommodations.

Student argues that audiology services should have been ongoing to address auditory working memory deficits. When Koskella administered the Wechsler Intelligence Scale for Children – Fifth Edition during Student’s fall 2022 triennial assessment, Student obtained a scaled score of 94, or average, in the working memory index. This result was later substantiated by Grajewski when she administered the same instrument in August 2023. On that test, Student obtained a scaled score of 91, or average, in the working memory index.

Student generally asserted that Capistrano should have offered ongoing services to address working memory deficits, but did not establish a need for such services or why Capistrano failed in not offering them. Student failed to establish the audiology services offered by Capistrano were inappropriate.

INTENSIVE READING AND WRITING INTERVENTIONS

Student contends that Capistrano should have offered sensory based reading interventions specific to Student’s needs using low student-teacher ratio instruction, but failed to do so. Capistrano generally contends that its IEP offer, including goals, services, and accommodations, was appropriate.

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The following reading and writing interventions offer was in place at the beginning of the statutory period: 45 minutes of specialized academic instruction five times a week in a separate group environment to support reading. Student was offered an additional 30 minutes of specialized academic instruction five times a week in the general education environment to support written expression.

Grajewski opined that Student required more intensive reading and writing intervention than that offered by Capistrano, namely, sensory based reading interventions specific to Student's needs using low student-teacher ratio instruction. But Grajewski did not explain how this recommendation was different than Capistrano's January 10, 2023 IEP offer, which specifically acknowledged Student's need for slower pacing, small group instruction, and modification of core curriculum and specialized strategies to adapt to Student's specific needs. The offer specifically listed multi-sensory instruction as an accommodation. Grajewski testified that she was not familiar with the term "structured literacy" as it related to Capistrano's instructional programs and could not explain any shortcomings in the offered program. Student did not establish that Capistrano denied him a FAPE based on its offer of reading and writing interventions.

The appropriateness of the reading and writing intervention service Capistrano offered on May 25, 2023, for Student's sixth grade year is discussed in conjunction with its placement offer in Issue 1.e.

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ISSUE 1.e.: DID CAPISTRANO DENY STUDENT A FAPE FROM JANUARY 10, 2023, THROUGH THE REMAINDER OF STUDENT'S 2023-2024 FIFTH GRADE SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE PLACEMENT?

In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location, or equipment necessary to provide instructional services to an individual with exceptional needs" as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042, subd. (a).) An IEP must be formulated before a placement decision is made, as placement determinations must be "based on the child's IEP." (34 CFR 300.116 (b)(2).)

For the fifth grade, the IEP team placed Student in the general education setting for most of the day at Arroyo Vista Elementary School with daily specialized academic instruction support and additional pull out specialized academic instruction. Specifically, Student's then-effective IEP offered 45 minutes of specialized academic instruction five times a week in a small separate group environment to support reading. For this, Student's education specialist employed evidence based specialized academic instruction, including structured reading curriculum Wonder Works and Read Naturally programs. Student also received 30 minutes of group specialized academic instruction five times a week in the general education environment to support written expression.

The IEP team met on May 25, 2023, to discuss Student's transition plan for the following 2023-2024 school year, as it would be Student's sixth grade year and his first year in middle school. For the sixth grade, the IEP team offered four collaborative classes in English, math, science, and social studies. The collaborative classes would consist of a general education class setting of about 25 students which could typically include anywhere from one to nine special education students. The collaborative

classes would be taught by a general education teacher as well as full-time specialized academic instruction support from either an education specialist or an instructional assistant paraeducator under the supervision of the education specialist.

Additionally, the team offered a direct resource class that took the place of an elective. A "direct" class was one with only special education students. In this class, students received specialized academic instruction in a small, separate setting, where they received help in all other academic classes, finished assignments, prepared for tests, and received extra instruction at a slower pace that still focused on grade-level standards.

The direct reading resource class employed the Institute for Multi-Sensory Education morphology, an evidence-based, structured literacy intervention that, as the name suggested, employed a multi-sensory approach to reading. At the time of the May 2023 offer, the resource class consisted of three to five students. The team also offered one period of general education physical education.

Student asserts that Student's fifth-grade placement during spring 2023 and the sixth-grade placement offer made in spring 2023 denied Student a FAPE because Student's needs required a more restrictive placement. Specifically, Student required a small class size and both placement offers placed Student in the general education setting for most of the day.

Both federal and state law require Capistrano to provide Student special education in the least restrictive environment appropriate to meet his needs. (20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a)(2)(i) (2006); Ed. Code, § 56040.1.) This means that Capistrano must educate a special needs pupil with nondisabled peers, "to the maximum extent appropriate," and the pupil may be removed from the general

education environment only when the nature or severity of the student's disabilities is such that education in general classes with the use of supplementary aids and services "cannot be achieved satisfactorily." (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(ii) (2006); Ed. Code, § 56040.1.)

An IEP is evaluated in light of information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) "An IEP is a snapshot, not a retrospective." (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*)

At the time the fifth-grade placement offer was made, Student had already exceeded his previous annual goal to read a 3-4 grade passage at 80 words per minute by reading a 4-5 grade passage at 90 words per minute. The IEP team reasonably concluded that Student would continue to benefit from the daily intensive reading interventions offered. To provide Student with small class instruction, the IEP team offered him 45 minutes of specialized academic instruction daily in the fifth grade, and an entire class period of specialized academic instruction daily in the sixth grade.

The remainder of Student's sixth-grade academic classes were collaborative classes. The evidence established that direct classes, completely removed from all general education peers, would be too restrictive, given Student's abilities. For example, Student did well in math and enjoyed it. Collaborative classes would allow Student educational benefit in the less restrictive placement with supports. Student did not establish that Capistrano denied Student a FAPE in its placement of Student from January 10, 2023, through the remainder of his fifth-grade year.

Similarly, Student failed to prove by a preponderance of the evidence that Capistrano's May 25, 2023, offer of reading and writing intervention and placement for Student's sixth-grade year was inappropriate to meet Student's unique needs. Student did not establish that his needs required a more restrictive placement than what was offered.

ISSUE 1.f.: DID CAPISTRANO DENY STUDENT A FAPE BY FAILING TO HAVE A SCHOOL PSYCHOLOGIST, OCCUPATIONAL THERAPIST, AND SPEECH AND LANGUAGE PATHOLOGIST ATTEND THE SEPTEMBER 19, 2023 IEP TEAM MEETING?

Student contends that Capistrano should have ensured the attendance of the school psychologist at the September 19, 2023 IEP team meeting, because Student's mental health was to be discussed then. Student contends that Capistrano should have ensured the attendance of the occupational therapist and speech and language pathologist because Student was receiving occupational therapy and speech therapy at that time, and those professionals should have been present to discuss whether Student's social emotional needs were due to communication or sensory deficits. Student contends that, at minimum, Capistrano should have informed Parents that it did not plan on having those professionals in attendance.

Capistrano contends that because the meeting was not an annual IEP team meeting or a meeting where any of those individuals would be discussing their assessment, it was not required to ensure the attendance of a school psychologist, occupational therapist, or speech language pathologist.

An IEP team is required to include:

1. one or both of the student's parents or their representative;
2. a regular education teacher if a student is, or may be, participating in regular education;
3. a special education teacher;
4. a representative of the school district who is qualified to provide or supervise specially designed instruction, is knowledgeable about the general education curriculum and is knowledgeable about available resources;
5. a person who can interpret the instructional implications of assessments results;
6. at the discretion of the parties, other individuals; and when appropriate, the person with exceptional needs. (34 C.F.R. § 300.321(a) (2006); Ed. Code, §§ 56341, subd. (b), 56342.5.)

The IEP team met on September 19, 2023, to address Parents' concerns with Student's mental health due to schoolwork overwhelm, whether Student's social studies teacher was supporting Student consistent with Student's IEP, and to discuss potential accommodations in Student's classes. The school psychologist, occupational therapist, and speech language pathologist did not attend this meeting.

Student argues that, although the meeting was not an annual one, the topics for discussion implicated Student's educationally-related social and emotional health, and that the school psychologist should have been present. Student also argues that

because Student was a special education student receiving occupational therapy and speech language services, an occupational therapist and speech language pathologist should also have been present. Student further alleges that Capistrano should have informed Parents that the psychologist, occupational therapist, and speech language pathologist were not planning to attend the September 19, 2023 IEP team meeting, and that Capistrano should then have obtained Parents' consent that these members be excused.

This interpretation is not consistent with the plain meaning of the statute. Under 34 C.F.R. § 300.321(a) (2006), Ed. Code, §§ 56341, subd. (b), and 56342.5, neither the school psychologist, nor the occupational therapist, nor the speech language pathologist were necessary members of the September 19, 2023 IEP team meeting. The parties do not dispute that the first four categories of necessary team members were in attendance. The fifth category of team member, individuals to interpret the instructional implications of assessments results, did not apply to the September 19, 2023 IEP team meeting because no assessment results were to be presented. The sixth category of necessary team member, a type of catchall provision, describes any other individual at the discretion of the parties. Student failed to introduce any evidence to establish that Parents requested that the school psychologist, occupational therapist, or speech language pathologist attend the September 19, 2023 IEP team meeting.

20 U.S.C. section 1414(d)(1)(C) describes the process by which parents may excuse the attendance of necessary team members. This analysis is not reached because Student did not establish that school psychologist, occupational therapist, or speech language pathologist were necessary members of the September 19, 2023 IEP team meeting.

Student failed to meet his burden of proof by a preponderance of the evidence that Capistrano denied Student a FAPE based on the absence of those individuals.

ISSUE 2.a.: DID CAPISTRANO DENY STUDENT A FAPE FOR THE IEP DEVELOPED OVER OCTOBER 10, 2023, OCTOBER 26, 2023, AND JANUARY 22, 2024, BY FAILING TO OFFER GOALS IN READING, SENSORY PROCESSING, AUDITORY PROCESSING, AND ORGANIZATION?

Student's annual IEP meeting took place over three meeting days, on October 10, 2023, October 26, 2023, and January 22, 2024, culminating in an IEP offer.

READING GOAL

Student argues that this IEP should have included a reading fluency goal because Student did not meet the previous year's reading fluency goal and continued having difficulty with reading grade-level academic language. Capistrano disagrees and contends that Student no longer needed a reading goal.

Grajewski administered the Wechsler Individual Achievement Test, Fourth Edition, as part of her independent evaluation in fall 2023. On the reading subtest, Student's reading ability equaled third grade, nine months.

Capistrano developed Student's 2022 reading fluency goal to assist Student to read a fifth-grade passage at 120 words per minute in four out of five consecutive trials. By Capistrano's own measure, Student achieved only 60 percent of this goal by October 2023. The evidence established that reading fluency remained one of Student's areas of need for which he required a goal. Capistrano should have offered a reading fluency goal in this IEP to address Student's continued fluency need.

Student proved that Capistrano denied Student a FAPE by not including a reading fluency goal in the IEP developed over October 10, 2023, October 26, 2023, and January 22, 2024.

SENSORY PROCESSING, AUDITORY PROCESSING, AND ORGANIZATION

For the reasons discussed in Issue 1.a., Student's sensory and auditory needs were addressed by accommodations, modifications, and supports. Student did not offer any testimonial or documentary evidence supporting an organization need for Student.

Student failed to meet his burden of proof on this issue.

ISSUE 2.b.: DID CAPISTRANO DENY STUDENT A FAPE FOR THE IEP DEVELOPED OVER OCTOBER 10, 2023, OCTOBER 26, 2023, AND JANUARY 22, 2024, BY FAILING TO OFFER APPROPRIATE GOALS IN READING COMPREHENSION, WRITTEN EXPRESSION, EXECUTIVE FUNCTION, AND ANXIETY?

READING COMPREHENSION

Student contends that the reading comprehension goals were inappropriate because they were unattainable and overly ambitious. Capistrano contends that all goals it offered during the statutory period were appropriate, given Student's needs.

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The IEP team identified reading comprehension as Student's most challenging academic task, with his comprehension level equal to the seventh month of the second grade. For this reason, Capistrano offered Student two reading comprehension goals in the 2023 IEP.

The first comprehension goal aimed to increase Student's comprehension level to middle fifth-grade range by giving specialized instruction using a multisensory systematic phonics-based program, as measured by multisensory structured reading program assessments in his reading intervention class. The second reading goal assisted Student's reading comprehension skills by having him locate specific information in a sixth-grade level science or social studies textbook, to successfully find the correct information and record it in his class workbook with 75 percent accuracy in three of four trials. The third reading goal developed Student's reading comprehension by having Student correctly answer "wh" questions with 80% accuracy in three consecutive trials, when given a sixth-grade level passage.

Student's expert, Grajewski, opined that these goals were inappropriate because they were too ambitious, essentially asking Student to increase three reading grade levels in one year. Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. (Letter to Butler, 213 IDELR 118 (OSERS 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).)

To accomplish these reading comprehension goals, Capistrano offered one period a day of direct, small group, specialized academic reading intervention that employed a multisensory, systematic, phonics-based approach. At the time the 2023 IEP

was offered, the Capistrano IEP team members believed, based on their educational expertise and personal knowledge of Student's abilities at school, that such reading goals were reasonable and attainable, given the services offered.

Capistrano did not have an opportunity to attempt these goals, however, as Student began attending Prentice the day after the IEP was offered. At Prentice, Student similarly received one hour a day of small group multisensory reading intervention.

With this intervention at Prentice, Student was able to increase an entire grade level in the DIBELS reading program from May 2024 to August 2024 alone. The spring 2024 Prentice report card stated that, at the end of the second semester of the sixth grade, Student was reading and comprehending literature at the sixth-grade level, earning a "Meeting Standard" mark. Student also earned a "Meeting Standard" mark in his ability to cite textual evidence to support analysis of what the text says, as well as inferences drawn from the text.

After-acquired evidence may shed light on the objective reasonableness of a school district's actions at the time the school district rendered its decision. (*E.M. v. Pajaro Unified Sch. Dist.* (9th Cir. 2011) 652 F.3d 999, 1006.) This after-acquired information was not available to Capistrano when it made its IEP offer on January 22, 2024, but further supports the conclusion that Student had the ability to learn at an accelerated rate with direct, small group, multisensory reading intervention.

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Student also argues that the locating information goal was inappropriate because it began with a baseline that was not specific as to Student's ability, stating only that Student had difficulty reading grade-level academic language and locating answers in a textbook. Although the IDEA requires "a statement of measurable annual goals," (20 U.S.C. § 1414(d)(1)(A)(i)(II)), it does not require a statement of quantifiable baselines. Rather, the IDEA requires baselines to contain "a statement of the child's present levels of academic achievement and functional performance." (*Id.* § 1414(d)(1)(A)(i)(I); *A.G. v. Paso Robles Joint Unified Sch. Dist.* (9th Cir. 2014) 561 Fed.Appx. 642, 644 (*Paso Robles*).) In *Paso Robles*, one IEP stated that A.G. had "some difficulty forming age-appropriate sentences," and another IEP stated that A.G. "often" shouted out off-topic answers without waiting for the teacher to call on him, but neither IEP defined "some" or "often" (*Ibid.*) There, the Ninth Circuit found no FAPE violation based on faulty baselines.

Here, the locating information baseline stated that Student had difficulty in locating answers in a textbook, which sufficiently stated Student's present levels in academic achievement and functional performance under the current legal standard. Thus, Student's argument is unpersuasive and fails.

Student did not meet his burden of proof by a preponderance of the evidence demonstrating that Capistrano denied Student a FAPE regarding any of the fall 2023 IEP reading comprehension goals.

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WRITTEN EXPRESSION

Student contends that the informative paragraph and opinion paragraph goals were inappropriate because they were the same goals carried over from the previous year's IEP. Capistrano contends that all goals it offered during the statutory period were appropriate, given Student's needs.

Specifically, the informative paragraph stated:

while using a graphic organizer, Student will independently write an informative paragraph with a topic (one point), three facts (one point for each), and a concluding statement (one point), scoring at least four out of five points in three consecutive trials.

The opinion paragraph stated:

while using a graphic organizer, Student will independently write a one paragraph opinion piece that introduces a topic (one point), states an opinion (one point), supplies two reasons that support the opinion (one point each), and a sense of closure (one point), scoring at least four out of five points on three consecutive trials.

Student also argues that the written expression goals were inappropriate because they did not include baselines. Because of Student's challenges in the fall of 2023, he was not producing any writing samples in his classes, and this fact is reflected in the baseline performance IEP sections. However, Capistrano appropriately quantified Student's baselines for each paragraph goal at zero, based on Student's current functional performance and academic achievement.

The IEP team wanted Student to continue working on the previous year's paragraph writing goals because he had not attained them. This was reasonable, especially given the importance of paragraph writing, as well as Student's demonstrated ability the year before in producing a paragraph using teacher-made writing frames. This, coupled with the new placement being offered, demonstrates the reasonableness of the IEP team's decision to have Student continue working on the previous year's paragraph writing goals. Student's argument that Capistrano offered inadequate paragraph writing goals lacks supporting and persuasive evidence and fails.

Student also argues that the written expression goals were inadequate because they did not include a spelling goal. In Grajewski's fall 2023 independent evaluation, she tested Student's spelling ability commensurate to the beginning of third grade on the Wechsler Individual Achievement Test, Fourth Edition. Grajewski also found a need in orthographic processing and orthographic fluency, related to spelling. The year prior, Koskella determined Student to be in the "low average" range for spelling on the Woodcock Johnson Tests of Academic Achievement, Fourth Edition, spelling subtest. Capistrano neither addressed nor rebutted Grajewski's findings on this issue. Student established through Grajewski's unrefuted opinions that Capistrano denied Student a FAPE by failing to offer a spelling goal in the fall 2023 IEP. Student did not establish a FAPE violation for any other written expression goals.

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EXECUTIVE FUNCTION

Student contends that the task initiation goal offered on January 22, 2024, was inappropriate because it was unclear and had no measurable baseline. Capistrano generally contends that the goals it offered during the statutory period were appropriate. Capistrano further contends that a measurable baseline is not a goal requirement under the IDEA.

The goal regarding initiating tasks stated that Student would independently initiate "the task" directed 90 percent of the time. This goal had no baseline, and was unclear as to what the task was. Student met his burden of proof by the preponderance of the evidence that Capistrano denied Student a FAPE by failing to offer a clear, measurable goal regarding task initiation.

Student asserts that the attendance goal was inappropriate because it failed to address the underlying cause of the absences. The IDEA does not require, on the face of a goal, a description of how the desired result will be achieved or the considerations of the individual responsible for implementing it. (20 U.S.C. § 1414(d)(1)(A)(i)(II) and (III); 34 C.F.R. §300.320(b); Ed. Code, § 56345, subd. (a)(2) and (3).) The attendance goal sought 90 percent attendance, met all requirements under the IDEA and was legally compliant. Student failed to meet his burden of proof regarding this issue.

ANXIETY

Student asserts that the goals meant to address anxiety were inappropriate because they did not have appropriate baselines. Capistrano disagrees.

The IEP team offered Student two goals to address his school-related anxiety: a self-advocacy goal and a coping strategies goal. Capistrano developed the self-advocacy goal to assist Student to independently ask for help from staff in three out of four opportunities when faced with an academic task that Student found overwhelming. At the time the goal was drafted, Student did not ask for help in his directed English class.

The coping goal helped Student independently utilize a previously taught healthy coping strategy in three out of four opportunities when experiencing feelings of stress. The baseline for this goal stated that Student dealt with feelings of stress by picking at his skin to the point that it bleeds. At the time the goal was drafted, Student could not identify any healthy coping strategies.

While baselines need not be quantifiable, Student's baseline performance for each anxiety goal was essentially measured at zero based on his present levels of performance. Per *Paso Robles*, the baselines communicated Student's level of functional performance, and were appropriate. (*Id.*, at 644.)

ISSUE 2.c.: DID CAPISTRANO DENY STUDENT A FAPE FOR THE IEP DEVELOPED OVER OCTOBER 10, 2023, OCTOBER 26, 2023, AND JANUARY 22, 2024, BY FAILING TO OFFER SERVICES IN AUDIOLOGY AND EXTENDED SCHOOL YEAR?

For the reasons set forth in Issues 1.c. and 1.d., Student did not establish that Capistrano denied Student a FAPE when it did not offer services in audiology and extended school year.

ISSUE 2.d.: DID CAPISTRANO DENY STUDENT A FAPE FOR THE IEP DEVELOPED OVER OCTOBER 10, 2023, OCTOBER 26, 2023, AND JANUARY 22, 2024, BY FAILING TO OFFER APPROPRIATE SERVICES IN OCCUPATIONAL THERAPY, COUNSELING, AND INTENSIVE READING AND WRITING INTERVENTIONS?

OCCUPATIONAL THERAPY

Aside from a blanket statement alleging that the occupational services offered were insufficient, Student did not explain, or establish, the insufficiency of the occupational therapy services offer to Student. For the reasons set forth in Issue 1.d., Student failed to prove by the preponderance of the evidence that Capistrano denied Student a FAPE for failing to offer sufficient occupational therapy services.

COUNSELING

The IEP team offered one hour of counseling per month when it made its IEP offer on January 22, 2024. Student argues that this offer was insufficient, based on Grajewski's opinion that Student should have received one hour of psychotherapy weekly. Capistrano contends that the counseling offer was sufficient, based on Student's educationally related needs.

When the IEP team first began meeting on Student's annual IEP on October 10, 2023, Grajewski's independent evaluation of Student was still underway. The IEP team discussed her completed report at the October 26, 2023 IEP. The IEP team reviewed

Grajewski's report with the school staff qualified to consider it. In addition to diagnosing Student with specific learning disorder in reading and written expression, Grajewski also diagnosed Student with generalized anxiety disorder and persistent depressive disorder.

As part of her assessment, Grajewski administered the Conners Four, a standardized behavior rating scale that evaluated a Student's ADHD-related behavior. On the parent rating scale, Mother scored Student as "very elevated" in anxious thoughts. Mother's input was consistent with her input on the 2022 triennial psychoeducational assessment conducted by Koskella, and expressed that Student was hard on himself, engaged in negative self-talk, held high expectations of others, resulting in frequent disappointment. Parent also expressed that Student did not handle disappointment well. On the Behavior Assessment System for Children, Third Edition, rating scale, Mother rated Student "at risk" for anxiety.

Student's general education teacher, Ms. Holst-Gavin, identified concern with Student's skin picking at school and rated Student in the "clinically significant range" for internalizing problems. The Multidimensional Anxiety Scale for Children, Second Edition, indexes the range and severity of anxiety symptoms. Grajewski administered this to Student, and Student self-reported that a "very high probability" exists that Student had one or more anxiety disorders. During testing, Grajewski observed that Student became tearful, resistant, and anxious when faced with difficult tasks like reading and writing. Based on her findings, Grajewski recommended one hour a week of psychotherapy.

Parents privately hired Grajewski to conduct an independent evaluation of Student; and was not a result of Parents' disagreement with a Capistrano assessment. As a result, Capistrano wanted to conduct its own social emotional assessment, and Koskella did so in December 2023. Student alleges that Capistrano denied Student a FAPE by failing to offer counseling services until the conclusion of Koskella's December 2023 social emotional assessment.

The purpose of an assessment is to help IEP teams identify the special education and related services a student requires. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.301; 300.303, 300.324(a)(1); Ed. Code, § 56341.1.) A district must conduct a reassessment if it "determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation." (20 U.S.C. § 1414(a)(2)(A)(i); see also Ed. Code, § 56381, subd. (a)(1).)

Here, Capistrano had conducted a psychoeducational evaluation of Student as a part of his triennial assessment in the fall of 2022. In light of Student's significant social and emotional downturn that developed during the fall semester of 2023, and in light of Grajewski's October 2023 diagnosis of generalized anxiety disorder and persistent depressive disorder, Capistrano was reasonable in seeking reassessment of Student. Reassessment was warranted to determine what change in services Student required.

Additionally, when presented with a private expert's report, a school district must consider the results of the assessment in any decision made with respect to the provision of FAPE to the student. (34 C.F.R. § 300.502(c)(1) (2006); Ed. Code, § 56329, subd. (c).) However, there is no requirement that the school district adopt the findings of the private evaluation. (*See T.S. v. Board of Educ. Of Town of Ridgefield*, (2nd Cir. 1993) 10 F.3d 87.) Thus, Capistrano had no obligation to offer Grajewski's

recommendations especially given the fact that its own social-emotional assessment was underway. Further, Koskella also sought to conduct an Educationally Related Mental Health Services assessment, but Parents refused, consenting only to social emotional reassessment. Capistrano's assessment also utilized different formal and informal assessment tools than Grajewski's assessment. Thus, Capistrano was reasonable in awaiting the additional results of Koskella's December 2023 social emotional assessment before making a counseling offer, which would then be informed by Student's new areas of need and the goals to address them and was close in time to Grajewski's completed report and recommendations. In the meantime, Capistrano addressed Student's immediate social emotional concerns by availing Student of general education counseling outside of the IEP process that was not goal-driven.

In making her social emotional assessment, Koskella reviewed Grajewski's evaluation report, administered rating scales to Student, Parents, and Student's teachers, and observed Student across a variety of educational settings at Arroyo Vista. On December 20, 2023, Koskella observed that, while in the large, co-taught class of general education and special education students, Student's demeanor changed; during an assignment when the class was reviewing a language arts packet, he shut down and began picking at his skin to the point of bleeding. Koskella's report concluded that Student displayed significant behaviors associated with anxiety and depression that adversely impacted his educational performance.

Koskella recommended, among other things, individual counseling. The IEP team reviewed Koskella's report at the January 22, 2024 meeting and offered 60 minutes a month of individual counseling, which Koskella agreed was appropriate. Grajewski opined that the frequency of the offer was inadequate because Student required weekly counseling.

The weight of the evidence established that Capistrano's offer of 60 minutes a month of counseling services was appropriate. In making her assessment, Koskella observed Student in a variety of educational settings, like in the fully general education environment of physical education, unstructured time at break, in his small group reading resource class, and a large, co-taught English class. By contrast, Grajewski exclusively practiced psychology privately, never worked as a school district psychologist, and did not observe Student in any educational setting at all.

Instead, she relied on her records review, testing results, and Parent and Student input. The lack of observation in Student's school setting undermined the persuasiveness of her opinions and recommendations. Without an observation at school, Grajewski could not adequately address whether Student's deficits seen in clinical testing, ratings, and interviews were accurate and that he needed weekly counseling services to make educational progress. She failed to see how Student functioned in any school setting to verify the validity of her assessment tools and recommendations. Thus, her opinion was given less weight.

Conversely, at the time of hearing, Koskella had been a school psychologist with Capistrano for 16 years. During this time, Koskella provided educationally-related psychological counseling to Capistrano students, performed district psychoeducational assessments and participated in IEP team meetings. Koskella conducted an average of 50 district psychoeducational assessments per year, and estimated that she had conducted about 700 in her career. Koskella was familiar with the potential and purpose of school psychology and counseling as an IEP service, and was in a better position to determine the appropriate amount of school counseling for Student's needs. Based on

these factors, the Capistrano determination of the sufficiency of 60 minutes of counseling a month is accorded more weight than Grajewski's recommendation of 60 minutes weekly.

Further, Capistrano's counseling offer was made in conjunction with a change in placement; had Student stayed in the same environment at Arroyo Vista with the same stressors that had produced such a significant change in his circumstance over one semester, a heftier counseling offer may have been warranted. But Capistrano's change in placement offer would have impacted Student in several significant ways. First, Student's change of school to the Ladera campus would have moved him away from the peers who were bullying him. Second, Student would have been in a smaller, slower paced learning environment tailored to his academic needs. Third, Student would have had the added benefit of built-in group social-emotional learning facilitated by the school counselor.

Capistrano made its counseling offer of 60 minutes per month in conjunction with a change in placement that it felt was better tailored to Student's needs. Capistrano expected an improvement in Student's social-emotional needs and made a commensurate counseling offer.

Student failed to prove by the preponderance of the evidence that Capistrano denied Student a FAPE by failing to make an appropriate counseling offer.

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INTENSIVE READING AND WRITING INTERVENTIONS IN FALL/WINTER 2023

During the time that Student's annual IEP team meetings were taking place, the IEP team offered a modified schedule to address Student's school avoidance. Specifically, after the October 26, 2023 IEP team meeting, the team suggested a modified schedule where Student attend his first four classes of the day, specifically, reading, math, directed English and physical education, and leave school at lunchtime before science and social studies, his last two periods of the day. Student argues that this approach did not allow Student to receive complete academic instruction commensurate with his same-aged peers and increased his academic gap.

The modified school schedule was Capistrano's temporary strategy to address Student's outright absence from school. Student was absent from school from October 19, 2023 to October 26, 2023, pursuant to a doctor's note citing Student's severe anxiety.

The Capistrano IEP team members did not believe this was an appropriate way to respond to school refusal, as prolonged time away from school would only exacerbate feelings of falling behind and school-related anxiety. Student's science and social studies classes required significant amount of writing and reading comprehension and were overwhelming to him. The Capistrano IEP team members believed that if Student could be encouraged to attend school without having to worry about his most overwhelming classes, he could be encouraged to establish more regular attendance.

Student's own expert, Grajewski, agreed that reducing demands of Student and temporarily starting with a shorter school day then building it up over time was a valid strategy to address school avoidance.

Student returned to attending school on November 2, 2023, on the modified schedule. By December 1, 2023, Student was attending some school. In math, Student participated well in group activities. In English, Student did language review quizzes independently.

The modified schedule was an interim measure that Capistrano took during the time leading up to the conclusion of Koskella's social emotional assessment and Capistrano's official placement offer. Even with the modified schedule, Student continued to receive directed instruction in reading and English, uninterrupted. Student did not establish that Capistrano acted unreasonably by not changing its IEP offer during the pendency of Grajewski's evaluation and Koskella's social emotional assessment. Student did not establish that Capistrano denied Student a FAPE by failing to offer appropriate reading and writing interventions during the pendency of the IEP team meetings.

Student's allegation that the IEP offer of January 10, 2024, did not offer appropriate intensive reading and writing interventions is addressed together with the issue of placement, below.

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ISSUE 2.e.: DID CAPISTRANO DENY STUDENT A FAPE FOR THE IEP DEVELOPED OVER OCTOBER 10, 2023, OCTOBER 26, 2023, AND JANUARY 22, 2024, BY FAILING TO OFFER AN APPROPRIATE PLACEMENT?

On January 10, 2024, Capistrano offered Student placement at the Home BASE program at its Ladera Ranch campus. Student contends that this placement offer denied Student a FAPE because it did not offer intensive, evidence based multisensory reading and writing instruction in small class sizes with social emotional learning embedded within. The weight of the evidence establishes that this is exactly what Capistrano offered.

The Home BASE program was essentially a smaller academy within a larger middle school setting. Home BASE classes provide education at grade level with small group learning opportunities for groups of three to five students in a group.

The grade-level specialized academic instruction was given at a slower pace for pupils, like Student, who experienced internalizing behaviors like school refusal, anxiety, and shutting down. To support these internalizing behaviors, social emotional supports were built into Home BASE classes as well. Further, the Home BASE common pod area and quiet room were both spaces that Student would have been able to access at any time during the school day for regulation. The IEP team offered Student Home BASE science and Home BASE social studies, to support his challenges in those areas.

Given Student's specific learning disabilities impacting reading and written expression, Capistrano offered specialized academic instruction through direct reading resource class and direct English. The direct classes consisted of about eight or nine

students each and were taught by an education specialist at a slower pace with intensive small group support. The students in the directed classes were typically two to three years behind grade level in that subject.

The direct reading resource class would employ a multisensory systematic phonics-based program. Student could continue participating with typical peers in his preferred classes, with specialized academic instruction in the general education classroom for collaborative math, and general education physical education.

A benefit of the Home BASE program was its flexibility. Unlike elementary school, each class was a discrete period. Student could move from a direct level of instruction to a Home BASE level of instruction or general education as his needs changed.

While the Ladera campus at large consisted of approximately 1,200 students, the Home BASE and sixth grade areas constituted a much smaller, separated portion of campus. Physically, the Home BASE and directed English and reading classes were configured in a self-contained cluster formation with a common pod area in the middle. Further, several areas on the Ladera campus were designated as sixth-grade-only areas, like bathrooms, four-square areas, lunch lines, and lunch tables. The campus also had a sixth-grade-only game room and quiet room.

Student's allegation relies on the opinion of Grajewski, who recommended Student attend Prentice. Grajewski did not accurately understand the Prentice program when forming her placement opinion. In her October 26, 2023, evaluation report, Grajewski erroneously stated that the Orton-Gillingham multisensory approach was used in all subjects at Prentice. Actually, Prentice provided one hour daily of Orton-Gillingham reading instruction. Claire Passaro, education specialist and

former Prentice special education teacher and program specialist, explained that Orton-Gillingham was an intervention curriculum specific to reading, and would not be used in other classes like science or social studies.

At the time of her report, Grajewski had not observed Student in any educational setting, nor had she visited the Home BASE program. At hearing, Grajewski testified against the appropriateness of the January 22, 2024, placement offer based on an erroneous understanding of it. Specifically, Grajewski opined that the Home BASE program focused too much on the social-emotional and not enough on academics. Grajewski felt this was an inappropriate approach for Student, since his social emotional challenges were a result of his academic struggles, and his school-related anxiety would not be resolved without addressing his underlying academic challenges.

Grajewski's impression of the Home BASE program was inaccurate. The Home BASE program was indeed geared toward pupils, like Student, with internalizing behaviors and offered embedded social emotional learning to support them. But the program also offered a robust academic program with intensive, evidence-based multisensory reading and writing instruction in small class sizes, just like what Student needed. Based on the foregoing, Grajewski's opinion on placement was not credible and accorded little weight.

If a child cannot be educated in an exclusively general education environment, the child must be mainstreamed to the maximum extent that is appropriate. (*Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1050.) The Home BASE placement offer allowed for an individualized schedule made up of a custom mix of directed, Home BASE, collaborative, and general education classes to suit Student's particular educational needs in each subject.

Student did not demonstrate that he required private placement in a school like Prentice with limited access to general education peers instead of a comprehensive campus like Ladera. Student did not establish that the January 22, 2024 IEP failed to offer Student appropriate intensive reading and writing interventions or appropriate placement.

ISSUE 3: DID CAPISTRANO DENY STUDENT A FAPE BY FAILING TO PROVIDE PARENTS PRIOR WRITTEN NOTICE REGARDING PARENTS' FEBRUARY 12, 2024 REQUEST FOR REIMBURSEMENT FOR PRIVATE PLACEMENT AND REQUEST FOR CONVENING STUDENT'S ANNUAL IEP TEAM MEETING?

A school district is required to give the parents of a child with a disability written notice a reasonable time before it refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. (20 U.S.C. § 1415(b)(3)(b); 34 C.F.R. § 300.503(a)(2) (2006); Ed. Code, §56500.4(a).) A prior written notice must contain, as relevant here: (1) a description of the action proposed or refused by the agency; (2) an explanation for the action; and (3) a description of the assessment procedure or report which is the basis of the action. (Ed. Code, § 56500.4, subd. (b).)

PARENTS' REQUEST FOR REIMBURSEMENT FOR PRIVATE PLACEMENT

Student contends that Capistrano failed to provide prior written notice to Student's February 12, 2024 notice of Student's unilateral placement at Prentice and request for reimbursement. Capistrano contends that it had already provided prior

written notice to an identical notice that Parents made a month prior, and that Capistrano was not obligated to provide additional prior written notice to a duplicate request.

On January 22, 2024, Parents sent a letter to Capistrano stating that they were placing Student at Prentice, and requested that Capistrano reimburse them for his attendance there. On January 26, 2024, Capistrano responded to this request in writing, declining to place Student in private school at public expense. The response contained all the elements required of a legally sufficient prior written notice.

On February 12, 2024, Parents' counsel sent a letter to Capistrano containing several requests. One of the requests reiterated Parents' request for reimbursement for Student's attendance at Prentice, to which Capistrano had already provided prior written notice. Student has not cited any legal authority that would require Capistrano to provide any additional prior written notices for Parents' counsel's reiteration of the same request sent less than one month later.

Student failed to prove by a preponderance of the evidence that Capistrano denied Student a FAPE when it did not provide another prior written notice to Student's reiterated reimbursement request.

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PARENTS' REQUEST FOR AN ANNUAL IEP TEAM MEETING

Student alleges that counsel's February 12, 2024 correspondence also requested an IEP team meeting that also necessitated a prior written notice. Student asserts that Capistrano's failure to respond to Parents' February 12, 2024 request for a fall IEP team meeting deprived Parents of an understanding of Capistrano's position on their meeting request. Capistrano asserts that any request in the February 12, 2024 letter for an IEP team meeting was vague, and thus did not necessitate a response from Capistrano.

Prior written notice is required before a district "refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child." (20 U.S.C. § 1415(b)(3)(b); 34 C.F.R. § 300.503(a)(2) (2006); Ed. Code, §56500.4(a).) Counsel's February 12, 2024 letter requested that Capistrano continue to hold annual IEP meetings for Student, which traditionally took place in October. Capistrano did not refuse Parents' request for a fall IEP team meeting and thus, a prior written notice was not required.

Rather, the evidence established that an IEP team meeting was held on November 18, 2024, and resulted in an IEP offer. Student did not cite any legal authority that would require Capistrano to provide written notice of its agreement to a parental request, which is otherwise outside a district's obligations under the IDEA.

Student did not establish that Capistrano should have provided prior written notice regarding a request for an October 2024 IEP team meeting. The timeliness of the IEP team meeting is addressed in Issue 5.

ISSUE 4: DID CAPISTRANO DENY STUDENT A FAPE BY FAILING TO ENSURE THAT PARENTS' SELECTED INDEPENDENT EDUCATIONAL EVALUATOR, DR. GRAJEWSKI, RECEIVED SUFFICIENT OPPORTUNITY TO OBSERVE STUDENT'S EDUCATIONAL PLACEMENT IN SPRING OF 2024?

Student contends that Capistrano did not afford Student's independent evaluator, Dr. Lisa Grajewski, a sufficient opportunity to observe its proposed placement setting of the Ladera Home BASE program. Capistrano contends that it did.

If a public education agency observed the pupil in conducting its assessment, or if its assessment procedures make it permissible to have in-class observation of a pupil, an equivalent opportunity shall apply to an independent educational assessment of the pupil in the pupil's current educational placement and setting, and observation of an educational placement and setting, if any, proposed by the public education agency, regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing proceeding. (Cal. Educ. Code § 56329(b).)

The evidence established that on May 2, 2024, Grajewski emailed Koskella, seeking to observe the Home BASE program at the Ladera Ranch campus. Minutes later, Koskella responded and informed Grajewski that Grajewski would have to arrange an observation directly with the Ladera school site.

On May 10, 2024, Grajewski emailed a contact ostensibly at Ladera to schedule an observation of the Home BASE program. The contact responded the next business day on Monday, May 13, 2024, referring Grajewski to Ladera's assistant principal. The assistant principal contacted Grajewski the following business day, on Tuesday, May 14,

2024, to offer some potential observation dates. Also on May 14, 2024, Parents' counsel sent an observation demand letter to Capistrano's Executive Director, erroneously claiming that Grajewski's attempts to contact Capistrano personnel to schedule a site visit had gone unanswered. Based on the content of the demand letter, Parents' counsel seemed unaware of the discussions between Grajewski and Capistrano personnel.

In her May 14, 2024, email to Grajewski, Ladera's assistant principal explained that the students at Ladera were involved in testing that week, and offered Grajewski a range of three days the following week on which she could conduct her observation – specifically, Monday, Tuesday, and Wednesday of the following week. The assistant principal invited Grajewski to select a few options for an observation appointment during that range of three days. Ultimately, Grajewski selected to conduct the observation on the first of the three-day window, Monday, May 20, 2024. Ladera staff informed Grajewski that students would not be in class at 8:00 a.m. on Monday, May 20, 2024, as it was a late start day, but that students would be present at other times during the three-day window. Grajewski nevertheless elected to proceed with the visit, based on her availability. Grajewski visited the Home BASE site on May 20, 2024, for about 15 minutes. During her observation, Grajewski was able to tour the Home BASE premises alongside Ladera's assistant principal and speak with Liz McGraw, the special education department chair and Home BASE teacher.

On August 13, 2024, Parents' counsel provided Capistrano with a copy of Grajewski's observation report.

Aside from the filing of this due process complaint, Student introduces no communication to suggest that Grajewski was dissatisfied with the length or access of her visit, that her visit was cut short or limited by Ladera staff, or that she sought to make

additional visits. Student did not establish what, if anything, Grajewski's observation lacked, and how that impacted her opinion. Certainly no such representations were made in Grajewski's observation report.

Student did not establish that Capistrano denied Student a FAPE for failing to give Grajewski an equivalent opportunity at observation.

ISSUE 5: DID CAPISTRANO DENY STUDENT A FAPE BY FAILING TO CONVENE AN ANNUAL IEP TEAM MEETING BY THE OCTOBER 9, 2024 DUE DATE?

Student contends that because Parents made a written request to continue with Student's annual IEPs, Capistrano was obligated to hold an IEP by what would have been Student's next IEP due date, or October 9, 2024. Student contends that Capistrano did not hold the requested IEP team meeting until November 18, 2024, and was untimely. Capistrano contends that, because Student was a parentally placed private school student, Capistrano was not beholden to Student's previous annual IEP due dates.

A district need not prepare an IEP for a parentally placed private school student unless the parents ask for one, regardless of whether parents are seeking reimbursement for the private placement. There is no freestanding requirement that IEPs be conducted when there is a claim for reimbursement. (*Capistrano Unified Sch. Dist. v. S.W.* (9th Cir. 2021) 21 F.4th 1125, 1138, interpreting 20 U.S.C. §1412(a)(10).) This runs opposite to the rule that applies to district students, which does have a standing requirement that districts meet at least once a year to review a district student's progress. (Ed. Code, § 56043, subd. (j).)

In 2024, Student was a parentally placed private school student and not entitled to annual IEPs. But on February 12, 2024, and again in a letter dated October 10, 2024, Parents, through their attorney, requested that the IEP team convene a meeting by what would have been Student's annual deadline in October 2024. The IEP team ultimately met on November 18, 2024.

An IEP team meeting requested by a parent shall be held within 30 calendar days from the date of receipt of the parent's written request. (Ed. Code, § 56043, subd. (l).) Even construing the IEP request timeline most favorable to Capistrano by measuring timeliness from Student's latest IEP request on October 10, 2024, the November 18, 2024 meeting did not occur within 30 days of the request and was still untimely. Aside from a general assertion that the meeting was held on the partes' first mutually agreeable date, Capistrano did not explain the delay.

The IDEA requires that a due process decision be based upon substantive grounds when determining whether a child has received a FAPE, unless a procedural violation impedes the child's right to a FAPE, significantly impedes the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to their child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subd. (j); *Rowley*, *supra*, 458 U.S. at pp. 206-207.)

Capistrano's failure to hold an IEP team meeting within 30 days of Parents' request was a procedural violation. This error did not, however, deny Student a FAPE because the delay did not result in material harm. A "child is denied a FAPE only when the procedural violation 'result[s] in the loss of educational opportunity or seriously infringe[s] the parents' opportunity to participate in the IEP formation process.'" (*R.B., ex rel. F.B. v. Napa Valley Unified Sch. Dist.*, 496 F.3d 932, 938 (9th Cir. 2007).)

During the months of October and November 2024, Student attended private school and did not receive any special education from Capistrano. Ultimately, Parents rejected the IEP offer that came out of the November 18, 2024, meeting. Even under Student's assertion that the IEP team meeting should have occurred by October 9, 2024, no evidence indicated that any practical harm resulted in the roughly five-week delay or that the delay caused a difference in outcome. For these reasons, Student did not establish that the delay resulted in the loss of educational opportunity to Student or infringed on Parents' ability to participate in the IEP process.

As such, Student failed to meet his burden of proof by the preponderance of the evidence that Capistrano denied Student a FAPE by failing to hold an IEP team meeting by October 9, 2024.

ISSUE 6.a.: DID CAPISTRANO DENY STUDENT A FAPE FOR THE IEP DEVELOPED ON NOVEMBER 18, 2024, BY FAILING TO OFFER GOALS IN SENSORY PROCESSING, AUDITORY PROCESSING, EXECUTIVE FUNCTION, AND ORGANIZATION?

SENSORY PROCESSING, AUDITORY PROCESSING, AND ORGANIZATION

For the reasons discussed in Issue 1.a., Student's sensory and auditory needs were addressed by accommodations, modifications and supports. Student did not offer evidence regarding an organization need. Student did not meet his burden of proof on this issue.

EXECUTIVE FUNCTION

Student contends that Capistrano should have offered an executive function goal in the November 18, 2024 IEP. Capistrano disagrees.

In making its November 18, 2024 IEP offer, Capistrano solicited input from Student's teachers at Prentice. Student's general education teacher shared that Student was on task, responsible, and turned in homework assignments on time. Student did not establish a need for an executive function goal.

Student failed to establish that Capistrano denied Student a FAPE when it did not offer an executive function goal in the November 18, 2024 IEP.

ISSUE 6.b.: DID CAPISTRANO DENY STUDENT A FAPE FOR THE IEP DEVELOPED ON NOVEMBER 18, 2024, BY FAILING TO OFFER APPROPRIATE GOALS IN ANXIETY, WRITTEN EXPRESSION, READING, AND READING COMPREHENSION?

Student continued at Prentice for his seventh grade, in the 2024-2025 school year. Based on Student's request for an IEP as discussed above, Student received a FAPE offer from Capistrano on November 18, 2024.

ANXIETY

Grajewski opined, and Student contends, that the self-advocacy and coping mechanisms goals were not necessary on the November 18, 2024 IEP offer, because of how well Student was doing at Prentice, socially and emotionally. Capistrano contends

that its anxiety goal offer was appropriate, because Student's decreased social emotional concerns were a result of him being removed away from stressors instead of a result of mastering healthy coping mechanisms.

In considering anxiety goals, Capistrano solicited input from Student's teachers at Prentice. Prentice teachers shared that Student had greatly improved his ability to advocate for himself, ask for support and clarification when needed, and find opportune and appropriate times to ask questions and gain clarity to complete tasks and assignments. Nevertheless, Capistrano continued to offer the self-advocacy and coping strategies goal as reflected on the 2023 IEP offer.

The Capistrano IEP team members believed that the anxiety goals should not be eliminated without first seeing how Student would fare in Capistrano's program since at the time of the November 18, 2024 offer, as Student had yet to attend the Home BASE program. This approach was reasonable, especially given reports from Student's Prentice teachers that Student engaged in the same "shutting down" behavior at Prentice in the sixth grade there, and Student had a recent history of school refusal at public school.

Capistrano solicited and considered recent input from Student's teachers at Prentice in considering anxiety goals, but nevertheless included a provision that it would collect data update the baseline for each goal within 60 days of Student's placement in a public program.

Student did not establish that Capistrano denied him a FAPE in making its offer of anxiety goals.

WRITTEN EXPRESSION

Student alleges that the paragraph writing goals were inappropriate because they were unattainable within a year. Capistrano contends that its goals were appropriate and took into consideration the input from Prentice teachers regarding Student's then-present levels of performance.

The informative paragraph goal carried over from the previous year's IEP: while using a graphic organizer, Student will independently write an informative paragraph with a topic (one point), three facts (one point for each), and a concluding statement (one point), scoring at least four out of five points in three consecutive trials.

The opinion paragraph goal was more challenging than the previous year's goal, because it sought three opinion-supporting reasons instead of two. The goal sought for Student, with the help of a graphic organizer, to independently write a one paragraph opinion piece that introduces a topic (one point), states an opinion (one point), supplies three reasons that support the opinion (one point each), and a sense of closure (one point), scoring at least five out of six points on three consecutive trials. However, it was not overly ambitious because the changes were made based on Student's then-present levels of performance as solicited from Prentice teachers.

Input from Prentice teachers established that Student was able to complete writing assignments by using graphic organizers and was able to write long passages by

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using speech to text technology. Capistrano's offer also included a provision that it would collect data and update the baseline for each goal within 60 days of Student's placement in a public program.

Student did not establish that Capistrano denied him a FAPE in its written expression paragraph writing goal offer.

WRITTEN EXPRESSION – KEYBOARD EFFICIENCY

Student alleges that the keyboard efficiency goal was inappropriate because it included a stale baseline from 2023. Capistrano disagrees. Student had not received any occupational therapy services at Prentice, so Capistrano did not have any new information regarding Student's occupational therapy needs. Capistrano's offer included a provision that it would collect data and update the baseline for each goal within 60 days of Student's placement in a public program.

Student did not establish that Capistrano denied him a FAPE based on its written expression keyboard efficiency goal offer.

READING

Student alleges that the reading fluency goal was inappropriate because it was unattainable in one year. Capistrano believes the reading goal was reasonable and attainable.

The goal read: "when given a DIBELS seventh-grade passage, Student will read the passage with an average of 120 words per minute in four out of five separate consecutive trials.: This goal was not unreasonable or overly ambitious, given the input

from Prentice teachers that Student was able to read a seventh grade DIBELS passage with 81 correct words per minute and 98 percent accuracy in August 2024, and had improved his reading fluency by six correct words per minute. Notwithstanding Capistrano's reading goal offer, it included a provision that it would collect data and update the baseline for each goal within 60 days of Student's placement in a public program.

Student did not establish that Capistrano denied him a FAPE in its reading goal offer.

READING COMPREHENSION

Student alleges that the reading comprehension goal was inappropriate because it was unattainable in one year, which Capistrano denies. The goal was a slightly more ambitious goal than the comprehension goal from the 2023 IEP: asking that Student answer "wh" questions with 90 percent accuracy, instead of 80 percent accuracy, in three out of three consecutive trials when given a sixth-grade level passage.

This goal was not unreasonable or overly ambitious, given the input from Prentice teachers that Student was working at the fourth-grade level on the Read Live program and was able to answer comprehension questions on main idea, vocabulary, inference, and literal questions with 71 percent accuracy. Prentice teachers also shared that Student was able to move up one grade level on the DIBELS literacy program from May 2024 to August 2024 alone, which demonstrated Student's ability for accelerated learning. Thus, Student's present levels of performance obtained from Prentice teachers supported the attainability of the reading comprehension goal offered by Capistrano to

Student within one year. Notwithstanding, Capistrano's offer included a provision that it would collect data and update the baseline for each goal within 60 days of Student's placement in a public program.

Student did not establish that Capistrano denied him a FAPE in its reading comprehension goal offer.

ISSUE 6.c.: DID CAPISTRANO DENY STUDENT A FAPE FOR THE IEP DEVELOPED ON NOVEMBER 18, 2024, BY FAILING TO OFFER SERVICES IN AUDIOLOGY AND EXTENDED SCHOOL YEAR?

For the reasons set forth in Issues 1.c. and 1.d., Student did not establish that Capistrano denied Student a FAPE when it did not offer services in audiology and extended school year.

ISSUE 6.d.: DID CAPISTRANO DENY STUDENT A FAPE FOR THE IEP DEVELOPED ON NOVEMBER 18, 2024, BY FAILING TO OFFER APPROPRIATE SERVICES IN OCCUPATIONAL THERAPY, COUNSELING, AND INTENSIVE READING AND WRITING INTERVENTIONS?

OCCUPATIONAL THERAPY

Student made no argument regarding the November 18, 2024 offer of occupational therapy, and no evidence presented at hearing supported Student's contention that Capistrano's occupational therapy offer was insufficient.

Student did not meet his burden on this sub-issue.

COUNSELING

Student contends that a counseling offer was unnecessary on the November 18, 2024 IEP offer, because of how well Student was doing at Prentice, socially and emotionally. Capistrano contends that its counseling offer was appropriate, because Student's decreased social emotional concerns were a result of him being removed away from stressors instead of a result of mastering healthy coping mechanisms.

In the November 18, 2024 IEP, Capistrano increased its offer of individual counseling services from 60 minutes a month in the previous offer to 30 minutes a week. Student alleges this offer was inappropriate, because Student no longer needed counseling services based on how well he was doing at Prentice; the Prentice team represented that they had no social emotional concerns about Student. Koskella herself noticed Student interacting in a positive manner, in both structured and unstructured settings, when she observed him at Prentice in September 2024.

Prentice was a small private setting that catered exclusively to students with language-based learning disabilities. Student's attendance there had eliminated his exposure to typical peers or normal academic pacing. The Capistrano members of the IEP team, however, were concerned that Student's decreased social-emotional concerns were a result of him being removed away from stressors instead of a result of mastering healthy coping mechanisms. At Prentice, Student received one hour of social emotional learning in class, but did not receive individual school counseling services.

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The IEP team offered counseling to support the goals it offered, and made the delivery more frequent to support Student's transition back to the district and to establish updated baselines of Student while also considering his recent social-emotional history at public school.

Student failed to establish that Capistrano's counseling offer was inappropriate.

INTENSIVE READING AND WRITING INTERVENTIONS

Capistrano's November 18, 2024 reading and writing interventions offer is discussed with its placement offer in Issue 6.e.

ISSUE 6.e.: DID CAPISTRANO DENY STUDENT A FAPE FOR THE IEP DEVELOPED ON NOVEMBER 18, 2024, BY FAILING TO OFFER APPROPRIATE PLACEMENT?

Capistrano reiterated its placement offer of January 22, 2024, in the November 18, 2024 IEP, complete with the embedded reading and writing interventions. Student contends that the offer disregarded the progress Student had made at Prentice, and was inappropriate because it was the same offer Capistrano made when Student was exhibiting school refusal, anxiety, and skin picking. Capistrano contends that its placement offer was appropriate for Student. Student's contention is misguided.

Since the January 2024 and November 2024 placement offers were made, which were the same, Student had not attended a comprehensive public school campus or experienced the offered program. Although Student demonstrated progress in the

more restrictive Prentice program, this progress did not render the Capistrano offer inappropriate. The inquiry must focus on whether the proposed placement was tailored to meet the unique needs of the Student in the least restrictive environment.

The last time Student was placed in a general education setting, he experienced significant school refusal behaviors and emotional distress, necessitating a change in placement and separate therapeutic supports. The prior challenges in a less restrictive environment must be given weight in determining the appropriateness of future placement, particularly where that experience resulted in school refusal. The January 2024 placement offer provided embedded therapeutic supports and allowed for access to general education curriculum and inclusion opportunities in accordance with Student's readiness and flexibility for more inclusion opportunities. A gradual, careful supported transition to a public school setting was more appropriate for Student as confirmed by Capistrano witnesses.

A determination of the appropriateness of the reading and writing interventions is made in Issue 2.e. Student failed to prove that Capistrano's November 18, 2024 reading and writing interventions offers, as well as its placement offer, were insufficient such that it denied Student a FAPE.

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ISSUE 7: DID CAPISTRANO DENY STUDENT A FAPE BY FAILING TO ENSURE MEANINGFUL PARENTAL PARTICIPATION IN THE IEP PROCESS BY FAILING TO PROVIDE STUDENT'S EDUCATIONAL RECORDS WITHIN FIVE DAYS OF PARENTS' OCTOBER 22, 2024 WRITTEN REQUEST?

Student alleges that Capistrano failed to provide educational records to Parents within five days of their October 22, 2024 written request for the same. Capistrano contends that it has no records responsive to Parents' request.

A parent shall have the opportunity to examine all school records of a child and to receive complete copies within five business days after a request is made by the parent, either orally or in writing, and before any meeting regarding an individualized education program of his or her child or any hearing or resolution session. (Cal. Educ. Code § 56043(n); 56504.)

On October 22, 2024, Parent's counsel, on Parents' behalf, sent a letter to Capistrano counsel requesting all raw IEP goal progress data collected from 2021 to present and any documents that were generated using this data, including charts, graphs, and reports. On November 6, 2024, Capistrano's counsel responded to the request by attaching Student's speech language progress notes and progress reports from the 2021-2022 school year.

Capistrano asserts that it does not maintain raw goal progress data as part of a student's educational file. Nevertheless, Capistrano asserts that, in an abundance of diligence, it asked Capistrano to search their own files for any responsive documents.

Aside from the documents given to Parents' counsel on November 6, 2024, Capistrano asserts that it has no other documents in its possession that are responsive to Student's request.

Capistrano produced the speech language notes and progress reports more than five days after Student's October 22, 2024 request. But these documents are not subject to a timeliness analysis, because by Student's counsel's own representation, they were not responsive to Student's educational records request. On March 17, 2025, Parents' counsel reiterated Student's educational records request, stating that Parents had not yet received the requested educational records.

Student failed to prove the existence of any further documents responsive to Student's request. Student did not establish that Capistrano denied Student a FAPE by failing to produce requested educational records within five days of Parents' October 22, 2024 request.

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CONCLUSIONS AND PREVAILING PARTY

As required by California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

ISSUE 1, SUBSECTION a:

Student failed to prove that Capistrano denied Student a FAPE in the IEPs developed on January 10, 2023, February 7, 2023, May 25, 2023, August 29, 2023, and September 19, 2023, by failing to offer goals in sensory processing, auditory processing, anxiety, executive function, and organization.

Capistrano prevailed on Issue 1.a.

ISSUE 1, SUBSECTION b:

Student failed to prove that Capistrano denied Student a FAPE in the IEPs developed on January 10, 2023, February 7, 2023, May 25, 2023, August 29, 2023, and September 19, 2023, by failing to offer appropriate goals in the areas of written expression, reading, and reading comprehension.

Capistrano prevailed on Issue 1.b.

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ISSUE 1, SUBSECTION c:

Student failed to prove that Capistrano denied Student a FAPE in the IEPs developed on January 10, 2023, February 7, 2023, May 25, 2023, August 29, 2023, and September 19, 2023, by failing to offer services in the areas of counseling and extended school year.

Capistrano prevailed on Issue 1.c.

ISSUE 1, SUBSECTION d:

Student failed to prove that Capistrano denied Student a FAPE in the IEPs developed on January 10, 2023, February 7, 2023, May 25, 2023, August 29, 2023, and September 19, 2023, by failing to offer appropriate services in occupational therapy, audiology, and intensive reading and writing interventions.

Capistrano prevailed on Issue 1.d.

ISSUE 1, SUBSECTION e:

Student failed to prove that Capistrano denied Student a FAPE in the IEPs developed on January 10, 2023, February 7, 2023, May 25, 2023, August 29, 2023, and September 19, 2023, by failing to offer an appropriate placement.

Capistrano prevailed on Issue 1.e.

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ISSUE 1, SUBSECTION f:

Student failed to prove Capistrano denied Student a FAPE by failing to have a school psychologist, occupational therapist, and speech and language pathologist at the September 19, 2023 IEP team meeting.

Capistrano prevailed on Issue 1.f.

ISSUE 2, SUBSECTION a:

Student proved that Capistrano denied Student a FAPE in the IEP developed on October 10, 2023, October 26, 2023, and January 22, 2024, by failing to offer a reading fluency goal. Student failed to prove that Capistrano denied Student a FAPE when it failed to offer goals in sensory processing, auditory processing, and organization.

Student prevailed in part on Issue 2.a., and Capistrano prevailed in part on Issue 2.a.

ISSUE 2, SUBSECTION b:

Student proved that Capistrano denied Student a FAPE in the IEP developed on October 10, 2023, October 26, 2023, and January 22, 2024, by failing to offer a spelling goal for written expression and an appropriate task

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initiation goal. Student failed to prove that Capistrano denied Student a FAPE by failing to offer appropriate goals in written expression, reading comprehension, executive function, and anxiety.

Student prevailed in part on Issue 2.b., and Capistrano prevailed in part on Issue 2.b.

ISSUE 2, SUBSECTION c:

Student failed to prove that Capistrano denied Student a FAPE in the IEP developed on October 10, 2023, October 26, 2023, and January 22, 2024, by failing to offer audiology services and extended school year.

Capistrano prevailed on Issue 2.c.

ISSUE 2, SUBSECTION d:

Student failed to prove that Capistrano denied Student a FAPE in the IEP developed on October 10, 2023, October 26, 2023, and January 22, 2024, by failing to offer appropriate occupational therapy, counseling, and intensive reading and writing interventions.

Capistrano prevailed on Issue 2.d.

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ISSUE 2, SUBSECTION e:

Student failed to prove that Capistrano denied Student a FAPE in the IEP developed on October 10, 2023, October 26, 2023, and January 22, 2024, by failing to provide an appropriate placement.

Capistrano prevailed on Issue 2.e.

ISSUE 3:

Student failed to prove Capistrano denied Student a FAPE by failing to provide Parents prior written notice regarding Parents' February 12, 2024 request for reimbursement for private placement and for convening Student's annual IEP team meeting.

Capistrano prevailed on Issue 3.

ISSUE 4:

Student failed to prove that Capistrano denied Student a FAPE by failing to ensure that Parents' selected independent educational evaluator, Grajewski, received sufficient opportunity to observe Student's educational placement in spring of 2024.

Capistrano prevailed on Issue 4.

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ISSUE 5:

Student failed to prove that Capistrano denied Student a FAPE by failing to convene an annual IEP team meeting by the October 9, 2024 due date.

Capistrano prevailed on Issue 5.

ISSUE 6, SUBSECTION a:

Student failed to prove that Capistrano denied Student a FAPE in the IEP developed on November 18, 2024, by failing to offer goals in sensory processing, auditory processing, executive function, and organization.

Capistrano prevailed on Issue 6.a.

ISSUE 6, SUBSECTION b:

Student failed to prove that Capistrano denied Student a FAPE in the IEP developed on November 18, 2024, by failing to offer appropriate goals for anxiety, written expression, reading, and reading comprehension were appropriate.

Capistrano prevailed on Issue 6.b.

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ISSUE 6, SUBSECTION c:

Student failed to prove that Capistrano denied Student a FAPE in the IEP developed on November 18, 2024, by failing to offer services in the areas of audiology and extended school year.

Capistrano prevailed on Issue 6.c.

ISSUE 6, SUBSECTION d:

Student failed to prove that Capistrano denied Student a FAPE in the IEP developed on November 18, 2024, by failing to offer appropriate services in occupational therapy, counseling, and intensive reading and writing interventions were appropriate.

Capistrano prevailed on Issue 6.d.

ISSUE 6, SUBSECTION e:

Student failed to prove that Capistrano denied Student a FAPE in the IEP developed on November 18, 2024, by failing to offer an appropriate placement.

Capistrano prevailed on Issue 6.e.

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ISSUE 7:

Student failed to prove that Capistrano denied Student a FAPE by failing to ensure meaningful participation in the IEP process by failing to provide Student's educational records within five days of Parents' October 22, 2024 written request.

Capistrano prevailed on Issue 7.

REMEDIES

Student proved that Capistrano denied Student a FAPE by failing to offer Student goals in reading fluency and spelling, and failed to offer an appropriate task initiation goal. The failures on all three goals spanned from the time the IEP was offered on January 22, 2024, until the next annual IEP was offered on November 18, 2024. Pursuant to the findings in this Decision, the November 18, 2024 IEP offered an appropriate reading fluency goal, and no executive function goal was needed. Student did not make any allegation regarding a spelling goal on the November 18, 2024 IEP offer.

Administrative Law Judges have broad latitude to fashion appropriate equitable remedies for the denial of a FAPE. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [105 S. Ct. 1996, 85 L. Ed. 2d 385 (*Burlington*)]; *Parents of Student W. v. Puyallup Sch. Dist.*, No. 3 (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*).) In remedying a FAPE denial, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA, specifically providing Student with a FAPE which emphasizes special education and related services to meet Student's unique needs. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3) (2006); *Burlington*, at p. 374.)

School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Puyallup*, at p. 1496.) The authority to order such relief extends to hearing officers. (*Forest Grove Sch. Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, fn. 11 [129 S.Ct. 2484].) These are equitable remedies that courts and hearing officers may employ to craft "appropriate relief" for a party. (*Puyallup*, at p. 1496.) An award of compensatory education need not provide "day-for-day compensation." (*Id.* at p.1497.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be fact specific. (*Ibid.*)

Student seeks reimbursement for tuition and fees for Prentice, therapy, play therapy, educational therapy, occupational therapy, and transportation mileage. This relief is not supported by the findings in this decision. None of these awards are warranted here, given that Capistrano has prevailed on the issue of its services and placement offers. The relief to which Student is entitled, based on the evidence, is discussed below.

There is no obligation to provide a day-for-day compensation for time missed; appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA. (*Puyallup*, at p. 1497.) A qualitative analysis is more appropriate here. This decision takes into account Student's age, the nature of Student's disability, and the number of hours likely to compensate Student for the denial of appropriate goals during the time Student was denied a FAPE, without being oppressive to Student. The order of compensatory hours represents the time that Student could have been working on his goals, had he been offered appropriate ones.

Considering all relevant factors, the undersigned relied upon equitable judicial discretion to craft an appropriate compensatory education remedy. Student is awarded 25 hours of compensatory specialized academic instruction hours through a nonpublic agency.

ORDER

1. Capistrano shall fund 25 hours of specialized academic instruction by a certified nonpublic agency of Parents' choice. Capistrano must establish direct payment to any certified nonpublic agency selected by Parents.
2. Once a contract is established with a certified nonpublic agency, Parent must coordinate the dates, times, and location of the compensatory services directly with the selected agency. The compensatory services may be provided at home, school, or another location determined by the nonpublic agency and Parents.
3. If the compensatory services are provided at the provider's location, Capistrano must either provide round trip transportation to the services or reimburse Parent for transportation at the federal rate established by the Internal Revenue Service according to proof, pursuant to Parent's election.
4. Student has until December 31, 2026, to use the compensatory services. Any services not used by that date will be forfeited.
5. All other requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Under Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

Claire Yazigi

Administrative Law Judge

Office of Administrative Hearings